

No. 34172-1-III

**COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON**

THE STATE OF WASHINGTON,

Respondent

v.

COREY JAVON WILLIAMS,

Appellant

**ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR BENTON COUNTY**

NO. 15-1-01280-4

BRIEF OF RESPONDENT

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I. RESPONSE TO ASSIGNMENTS OF ERROR

- A. Response to Assignment of Error Number 1 (“The prosecution presented insufficient evidence of theft of a motor vehicle.” Br. of Appellant at 1.): The State disagrees. There was sufficient evidence to convict.
- B. Response to Assignment of Error Number 2a (“The prosecution improperly commented on Pugh’s Fifth Amendment right not to take the witness stand.” Br. of Appellant at 1.): The two sentences in the prosecutor’s closing argument were proper and did not affect the guilty verdict.

Response to Assignment of Error Number 2b (“The prosecution improperly suggested that Pugh had a burden to produce evidence regarding the validity of the lien he filed.” Br. of Appellant at 1.): The prosecutor’s closing argument was proper and did not affect the guilty verdict.
- C. Response to Assignment of Error Number 3a (“The *Faretta* colloquy was inadequate because the trial court failed to inform Corey Javon Pugh that technical rules exist that would bind him in the presentation of his case and failed to ensure Pugh understood the risks of self-representation.” Br. of Appellant at 1.): The defendant was steadfast in demanding he represent himself and was fully advised of the dangers and requirements.
- D. Response to Assignment of Error Number 3b (“The *Faretta* colloquy was inadequate because the trial court failed to inform Pugh of the maximum penalties he faced upon conviction.” Br. of Appellant at 1.): The trial court informed the defendant of the maximum penalties.
- E. Response to Assignment of Error Number 4 (“The trial court failed to make an adequate inquiry into Pugh’s financial resources and current and future ability to pay before imposing discretionary LFOs.” Br. of Appellant at 1.): The State agrees; the court should only impose the mandatory fees.

- F. Response to Assignment of Errors 5 and 6 (“The \$200 criminal filing fee pursuant to RCW 36.18.020(2)(h) violates equal protection” and “The \$200 criminal filing fee is not a mandatory legal financial obligation.” Br. of Appellant at 2.): The filing fee is a mandatory cost and imposing it does not violate equal protection.
- G. Response to Assignment of Error Number 7 (“RCW 7.68.035 and RCW 43.43.7541 violate substantive due process when applied to defendants who do not have the ability or likely future ability to pay.” Br. of Appellant at 2.): Due process is not violated by imposing mandatory fees.

II. STATEMENT OF FACTS

Basis of charge of Theft of a Motor Vehicle:

The key timeline is as follows:

September 29, 2015: The defendant rented a Ford Mustang from a Budget Rental Car. *See* Ex. 1 (attached as App. A); Report of Proceedings¹ (RP) at 101. The terms of the agreement required the defendant to return the vehicle on October 6, 2015, at 9:00 a.m. in Richland, Washington. *See* Ex. 1; RP at 102.

October 6, 2015: The defendant did not return the vehicle. RP at 105. The manager of Budget Rental, Kevin Damrell, tried unsuccessfully to contact the defendant via text message. RP at 106.

¹ Unless otherwise indicated, “RP” refers to the two volumes of the verbatim report of trial proceedings, dated February 22-23, 2016, transcribed by court reporter Cheryl Pelletier.

November 5, 2015: The defendant faxed a document titled “UCC Financing Statement” to Shelley Horton of Budget Car Sales. *See* Ex. 3 (attached as App. B). The defendant also left a message for Ms. Horton stating that the bank that was the legal owner of the vehicle owed him money and that he was going to file proceedings to take ownership of the vehicle. RP at 150. The “UCC Financing Statement” refers to a “Lien is attached [sic] for 1,000,000,000.00 dollars and continuance of fee’s and damages are applicable [sic].” *See* Ex. 3.

December 26, 2015: The vehicle was found in Olympia, Washington, unoccupied and locked. RP at 176.

Defendant waives right to an attorney and requests to proceed pro se:

There were two Informations filed regarding the defendant: Benton County Number 15-1-01178-6, charging two counts of Residential Burglary, and Benton County Number 15-1-1280-4, charging Theft of a Motor Vehicle. CP 38-39; RP 12/28/2015 (App. C) at 4. At his arraignment, the defendant stated he wanted to represent himself. RP 12/28/2015 (App. C) at 3.

The court’s colloquy with the defendant is attached in the appendix. However, the colloquy included the following advisements:

- That the defendant was charged with Theft of a Motor Vehicle, which was a class B felony, punishable by 10 years in prison and a fine of \$20,000. RP 12/28/2015 (App. C) at 3-4.
- That he would be held to the same standards as an attorney, including knowledge of the law, the court rules, and presentation of evidence. RP 12/28/2015 (App. C) at 5.
- The defendant stated he had three years of college and had studied criminal law and business law in college. RP 12/28/2015 (App. C) at 5.
- The defendant stated he was familiar with the RCWs regarding the Theft of a Motor Vehicle charge based on another charge in Alaska and CrR 7.8 motions. RP 12/28/2015 (App. C) at 5-6.
- That he was charged with Residential Burglary, also a class B felony punishable by 10 years and a fine of \$20,000. RP 12/28/2015 (App. C) at 7.
- The defendant also stated he was familiar with the RCWs regarding the elements of Residential Burglary. RP 12/28/2015 (App. C) at 8.

The court also took other opportunities to advise the defendant of the dangers of representing himself. For example, on January 28, 2016, the court stated:

24 THE COURT: Now, Mr. Williams, you will recall when
25 I -- when we went through a colloquy and I allowed you to

page
12

MOTION TO DISMISS

January 28, 2016

1 represent yourself, I indicated to you that you would be held
2 to the same standard as an attorney. You would be held to
3 the same standard of knowledge of the law and the same
4 standard with respect to preparation, presentation, and the
5 conduct of the case. I also told you that I could not help
6 you. I'm going to take a little bit of time and explain to
7 you a couple of things now that the case has been argued,
8 hopefully to explain to you what the issue is regarding the
9 motion that's been raised and again to explain to you that I
10 urge you to be represented by an attorney.

RP 01/28/2016 at 12-13.

The defendant did not testify at trial and was found guilty as charged.

III. ARGUMENT

A. **State's response to defendant's argument number 1**
("The State presented insufficient evidence of Theft of a Motor Vehicle given that there was no evidence presented that Pugh obtained property wrongfully or by color or aid of deception." Br. of Appellant at 10.)

1. **Standard on review.**

Evidence is sufficient to support a conviction if, when viewed in the light most favorable to the prosecution, it permits any rational trier of

fact to find each essential element of the crime beyond a reasonable doubt. *In re Candelario*, 129 Wn. App. 1, 7, 118 P.3d 349 (2005). All reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom. *Id.*

2. There was sufficient evidence to convict, especially when viewing the evidence in the light most favorable to the State.

No matter how the case is examined, a reasonable jury could find the defendant guilty. Ignoring the "UCC Financing Statement," the defendant rented a car for seven days, did not return it at the end of those seven days, told the car rental company he would not return the car, and then abandoned it on the other side of Washington State where it was discovered almost three months after he rented it.

If the "UCC Financing Statement" is viewed as a ridiculous attempt by the defendant to excuse his theft of the rental car, it is even more obvious that the defendant's intent was to steal the vehicle. Note that the defendant said nothing unusual when he rented the car. RP at 104-05. If the "UCC Financing Statement" were legitimate, the defendant would have loaned \$1,000,000,000 to The Bank of New York Mellon

Trust Company and/or the PV Holding Corp. within five days of renting the car. *See* Ex. 3.

The jury could certainly reasonably conclude that the “UCC Financing Statement” was produced by the defendant to excuse his theft of the car. Nevertheless, such a document would not give the defendant ownership of the vehicle. It would only mean that the defendant has a collateral interest in the vehicle.

There was more than enough evidence under the “evidence viewed in light most favorable to prosecution” standard to find the defendant guilty.

B. State’s response to defendant’s argument number 2
 (“The prosecutor’s improper comments on Pugh’s constitutional right not to testify and on not presenting evidence regarding the validity of the lien improperly shifted the burden of proof to Pugh and deprived him of a fair trial.” Br. of Appellant at 15.)

Facts relating to argument:

As part of a closing argument covering 12 pages of transcript, the prosecutor made the following comment: “

14 You guys, we didn't hear any testimony about
15 how he came to be owed a billion dollars between
16 September 29th and October 4th when this filing was
17 made.

RP at 325, ll. 14-17.

However, this was part of a broader argument that there was no evidence supporting the validity of exhibit number 3, the “UCC Financing Statement”: (see following pages for excerpt from State’s closing argument)

1 back. So two days before the car is due back, Mr.
2 Williams or Mr. Pugh, or the C. Williams Group, all
3 the same person is --

4 MR. WILLIAMS (PUGH): Objection, Your
5 Honor.

6 THE COURT: Overruled.

7 MS. RUFF: -- is making documentation,
8 legal documentations that he's old a billion dollars
9 before their car is ever due back. That it's his
10 now. But he waits to tell Budget a month, 30 days
11 after he makes his filing he owns it now. Well if he
12 owned it, if he's owed a billion dollars, why not
13 tell them right away? It's mine, I'm keeping it.

14 You guys, we didn't hear any testimony about
15 how he came to be owed a billion dollars between
16 September 29th and October 4th when this filing was
17 made.

18 MR. WILLIAMS (PUGH): Objection, Your
19 Honor. They did a jury instruction stating that the
20 defendant does not have to testify, now she's
21 testifying for me.

22 THE COURT: No. I'm going to overrule the
23 objection. Go ahead, counsel.

24 MS. RUFF: But we do know from Mr. Damrell,
25 I asked, your contract with him -- you'll get a copy

CLOSING/STATE

325

1 of that -- gives estimated charges, right? Estimated
2 charge, \$219. Mr. Pugh did not have any qualms about
3 that, never said, nope, I'm not going to owe that
4 money. No, this car is actually going to be mine.
5 So we know sometime between September 29th and
6 October 4th, P.V. Holding Corp., or Budget Car Sales,
7 came to owe him a billion dollars, if you believe the
8 lien filing.

9 You could also find, though, as a jury, that
10 this lien filing is not worth the paper it's written
11 on. You can find, based on the weight of the
12 testimony from all of the witnesses who testified,
13 based on his history, that this is just a way to
14 obtain a car by theft; that this lien document is a
15 way to take a rental car that belongs to someone
16 else, that Kevin Damrell's company had a right to
17 rent out and a right to possess, and keep it.
18 Because this is what he does. He takes documents
19 like this that seem -- well, it's a lien filing, it
20 seems legit, right? But we know from --

RP at 325, l. 1, to 326, l. 20.

1. Standard on review.

The defendant has the burden to prove the prosecutor's closing argument was improper and prejudiced the jury. Where the defendant has unsuccessfully objected to the prosecutor's closing argument, the

reviewing court must evaluate the trial court's ruling for abuse of discretion. *State v. Gregory*, 158 Wn.2d 759, 809, 147 P.3d 1201 (2006).

2. The trial court did not abuse its discretion in overruling the defendant's objection.

State v. Dixon, 150 Wn. App. 46, 207 P.3d 459 (2009), cited by the defendant, is not on point. In *Dixon*, the prosecutor stated, "I want to pose this question to you: Why didn't [Dixon] bring that passenger in to testify for her. She knew who he was. . . . And if that passenger had anything at all to say, don't you think [Dixon] would have contacted him?" 150 Wn. App. at 52. Here, the prosecutor did not state that the defendant failed to produce witnesses, but that "we didn't hear any testimony about how he came to be owed a billion dollars between September 29th and October 4th." RP at 325.

This type of argument is allowed. The argument was part of the explanation that the jury could determine the credibility of witnesses, including the claim that the defendant made to Shelly Horton that he owned the Ford Mustang he rented. *State v. Jackson*, 150 Wn. App. 877, 209 P.3d 553 (2009), also dealt with a prosecutor's argument that "there was not a single shred of testimony in this case to corroborate [the defendant's] story." 150 Wn. App. at 885. The court held this was part of

an argument listing numerous reasons why the jury should find the State's witnesses more credible than the defense witnesses. *Id.* at 885.

Also, the prosecutor's argument was in direct response to the defendant's claim, made through Ms. Horton, that he owned the Ford Mustang because of a debt due to him from the legal and registered owner. A comment is not improper if it is in direct response to a defense argument. *Dixon*, 150 Wn. App. at 56.

3. There is no prejudice.

The defendant rented a car for seven days, failed to return it, came up with a nonsensical excuse about a bank owing him \$1,000,000,000, kept the car about two and a half months after it was due back to Budget Rental, then abandoned the car on the west side of Washington State. The prosecutor's three lines of closing argument had nothing to do with the jury verdict.

C. State's response to defendant's argument number 3
("The trial court failed to secure a knowing, voluntary, and intelligent waiver of Pugh's right to counsel." Br. of Appellant at 19.)

1. The defendant has a constitutional right to represent himself, and the standard on review is abuse of discretion.

No matter what a trial court does when a defendant requests to proceed pro se, the decision will be questioned. Deny the request, and the defendant on appeal will argue that his right of self-representation was

denied. *See State v. Madsen*, 168 Wn.2d 496, 229 P.3d 714 (2010).

Approve the defendant's request, and the defendant on appeal will argue that his waiver was faulty because something was omitted.

Criminal defendants have the explicit right to self-representation under the Washington Constitution, article 1, section 22, and an implicit right under the Sixth Amendment to the U.S. Constitution. *Madsen*, 168 Wn.2d at 503. When a defendant requests pro se status, the trial court must determine whether the request is unequivocal and timely. *State v. Stenson*, 132 Wn.2d 668, 737, 940 P.2d 1239 (1997). The court must then determine if the defendant's request is voluntary, knowing, and intelligent. *Madsen*, 168 Wn.2d at 504.

A denial of the right to proceed pro se is reviewed under an abuse of discretion standard. *Id.*

However, when viewed for abuse of discretion, it should be clear that the trial court did not abuse its discretion in granting the defendant's request to proceed pro se.

2. The defendant's request for pro se status was both timely and unequivocal.

The defendant stated he did not want an attorney and wanted to represent himself at his arraignment. RP 12/28/2015 (App. C) at 3. His determination to proceed pro se was never shaken, although the court

urged him to be represented by an attorney in the hearing on January 28, 2016 (RP 01/28/2016 at 13), and February 11, 2016 (RP 02/11/2016 at 9).

The defendant's steadfastness in self-representation should be viewed in the context of what happened to him previously. He had eight prior felony convictions. RP 12/28/2015 (App. C) at 6. He was apparently represented by an attorney on those convictions. The defendant may have concluded that he could have done as well as an attorney in the 2015 cases.

3. The colloquy to ensure that his waiver was knowing, voluntary, and intelligent was adequate.

The colloquy on December 28, 2015, covered the following:

- That Residential Burglary is a Class B felony punishable by up to 10 years in prison and a fine of \$20,000. RP 12/28/2015 (App. C) at 7, ll. 7-13.
- That Theft of a Motor Vehicle is also a Class B felony punishable by up to 10 years in prison and a fine of \$20,000. RP 12/28/2015 (App. C) at p. 4, lines 22-25.
- That the defendant would be held to the same standards as an attorney. RP 12/28/2015 (App. C) at 5, ll. 2-5.
- That the defendant stated he was familiar with the rules of evidence in the State of Washington through criminal law

and business law classes at Columbia Basin College. RP 12/28/2015 (App. C) at 5, ll. 14-20.

- That he is familiar with the Revised Code of Washington regarding the charge, RP 12/28/2015 (App. C) at 5, ll. 21-24, and had fought another Vehicle Theft charge in Alaska, RP 12/28/2015 (App. C) at 6, ll. 2-3.

The court further advised the defendant on January 28, 2016, that he would be held to the same standard as an attorney regarding knowledge of the law, among other things. RP 01/28/2016 at 13. Also, on February 11, 2016, the court again advised the defendant of the dangers of representing himself. RP 02/11/2016 at 9.

This colloquy met the requirements of *Faretta v. California*, 422 U.S. 806, 819, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975).

In addition, while the defendant's comment that he was a "secured party" during the colloquy seems "somewhat incongruous" (Br. of Appellant at 23) in isolation, in light of his defense at trial, it made sense.

The defendant chose to proceed pro se voluntarily with a full understanding of the dangers and consequences. The trial court did not abuse its discretion in allowing granting his request.

- D. State's response to defendant's argument number 4**
("The trial court's inquiry into Pugh's financial circumstances was inadequate to satisfy RCW 10.01.160." Br. of Appellant at 25.).

The State agrees that only mandatory fees should be imposed.

Therefore, the State will agree to strike from the cost bill the Sheriff's service fee of \$60, the jury demand fee of \$250, and the witness fees of \$41.34. *See* CP 95.

- E. State's response to defendant's argument numbers 5, 6, and 7** ("The 'mandatory' imposition of the \$200 criminal filing fee violates equal protection given that similarly situated civil litigants are permitted a waiver" (Br. of Appellant at 30) and "The \$200 criminal filing fee is not mandatory and the trial court should have inquired into Pugh's ability to pay before imposing it" (Br. of Appellant at 33) and "RCW 7.68.035 and RCW 43.43.7541 are unconstitutional as applied to defendants who do not have the ability or likely future ability to pay legal financial obligations" (Br. of Appellant at 40).).

1. The \$200 filing fee is mandatory.

Pursuant to RCW 36.18.020 and *State v. Gonzales*, 198 Wn. App. 151, 153-55, 392 P.3d 1158 (2017), the \$200 filing fee is mandatory.

2. Equal protection is not violated by imposing the filing fee.

See the unpublished case of *State v. Ma*, 195 Wn. App. 1036 (2016) (unpublished), which is cited under GR 14.1 for persuasive value as a non-binding opinion, with no precedential value. App. D.

3. The Victims Penalty Assessment (RCW 7.68.035) and the DNA collection fee (RCW 43.43.7541) do not violate equal protection.

See *State v. Mathers*, 193 Wn. App. 913, 926, 376 P.3d 1163 (2016).

IV. CONCLUSION

The conviction should be affirmed.

The jury had more than sufficient evidence to conclude the defendant was guilty of the crime of Theft of a Motor Vehicle.

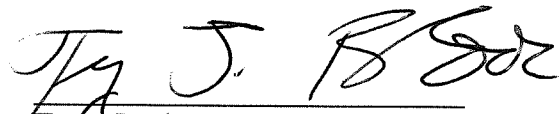
The prosecutor did not improperly comment on the defendant's right not to testify or present evidence. The defendant brought up the claim that he owned the vehicle and the prosecutor was allowed to argue that there was no evidence supporting that claim. The prosecutor's comment was that "we have heard no evidence" rather than "the defendant did not provide any evidence" In any event, the one sentence in an argument over 12 pages of transcript had no impact on the jury verdict.

The trial court did not abuse its discretion in granting the defendant's request to proceed pro se. The trial court told the defendant of the dangers of self-representation, advised him of the possible sentences, and accepted the defendant's assurances that he had studied the law, knew the statutes involved, and was familiar with court rules.

Concerning the costs, the State agrees that only mandatory costs should be imposed. But those costs, the filing fee, the DNA collection fee and the Victim's Penalty Assessment, should be imposed.

RESPECTFULLY SUBMITTED this 27th day of September, 2017.

ANDY MILLER
Prosecutor



Terry J. Bloor, Deputy
Prosecuting Attorney
Bar No. 9044
OFC ID NO. 91004

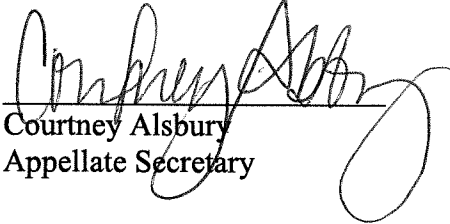
CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this day I served, in the manner indicated below, a true and correct copy of the foregoing document as follows:

Kevin March
Nielsen, Broman & Koch, PLLC
1908 E. Madison Street
Seattle, WA 98122

☒ E-mail service by agreement
was made to the following
parties:
Sloanej@nwattorney.net

Signed at Kennewick, Washington on September 27, 2017.



Courtney Alsbury
Appellate Secretary

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Appendix A – Exhibit 1

Appendix B – Exhibit 3

Appendix C – December 28, 2015 Transcript, pages 4-9

Appendix D - *State v. Ma*, 195 Wn. App. 1036 (2016) (unpublished)

Appendix A

Exhibit 1 – Rental Agreement

15-22939

RENTAL AGREEMENT NUMBER 452225074

Customer Name : PUGH, COREY J
 Drivers Lic Number : USWAPUGH*GJ2361D
 Budget Corp Disc. : BUDGET LOCAL MARKET DISC
 Method of Payment : MASTER XX3508

Budget Car Num : 4 0 5 6 3 1 4 3
 Plate Number : CA 7LJY345
 Veh Description : BLK FORD MUSTANG 2DR/4PSGR
 Odometer Out : 6887 MIs
 Fuel Gauge Reading: Full

Pickup Date/Time : SEP 29, 2015 09:01 AM
 Pickup Location : 901 AARON DRIVE
 RICHLAND, WA, 99352, US

Return Date/Time : OCT 06, 2015 09:00 AM
 Return Location : 901 AARON DRIVE
 RICHLAND, WA, 99352, US

Additional Fees May Apply If Changes Are Made To Your Return Date, Time And/Or Location.

OUR ESTIMATED VEHICLE CHARGES

IN 99 HAS MAX 28 DAY

RATE CHART TIME AND MILEAGE

RLY : 20.50

LY : 41.00

D DY: 41.00

KLY : 209.99

THLY:

Is : Unlimited

1WK 209.99= 209.99

less 13.0% Discount = 24.57

OUR Estimated Time & Mileage:

EN LICENSE RECOUP .34 /DY + 2.38

ENERGY RECOVERY FEE .60 /DY + 4.20

Estimated Subtotal Charges:

Sales Tax 8.600% + 16.51

RENTAL TAX + 11.33

OUR ESTIMATED TOTAL CHARGES X 219.84

YOUR OPTIONAL PRODUCTS/SERVICES

Loss Damage Waiver 20.99/Day Declined
 Personal Accident and Effects 4.25/Day Declined
 Emergency Sickness Plan 5.00/Day Declined
 Supplemental Liability Insurance 11.69/Day Declined

By my initials CP I accept or decline optional services/products as shown above X

Please return the vehicle with the same fuel level as you received it. Please provide a receipt for fuel purchased. If you do not, additional fuel fees may apply: 001-074

MIs equals a 13.99 flat rate fee. 075 MIs and above equals .4709 per MI or 9.890 per Gal. X

I understand that important information on cashless toll roads and e-Toll services can be found at budget.com/etoll. X

NOTICES-----BUDGET-----NOTICES-----BUDGET-----NOTICES-----BUDGET-----NOTICES-----

Loss Damage Waiver is optional. An added daily cost of 20.99 covers your responsibility for damage to our car. Check with your insurer as this may be duplicative of your own car insurance. I agree the charges listed above are estimates and that I have reviewed/agreed to all notices/terms here and in the rental jacket. No additional drivers allowed without prior written consent. Tickets, fines and admin fees to be charged to this rental.

If you have questions regarding this rental, call us at 509-946-5144

This vehicle was rented to you by KEVIN

For a copy of our Privacy Notice, please go to www.budget.com/privacy or write to Privacy Officer, Budget, 6 Sylvan Way, Parsippany, NJ 07054.

Enroll today for FREE at budget.com/smallbiz
or call 1-866-671-7202.

For Budget CSR Use Only • In CPN, enter TUF2013 • Complete this information: RA #: _____
Operator ID: _____ Rental Location: _____ • Attach to COUPON tape

Terms and Conditions: To deem this offer, customer must provide promotional code at time of reservation. Confirmation number will be provided to customer upon confirmation of rental deposit. Offer is subject to availability at participating locations and some blackout dates may apply. 24-hour advance reservation is required. Offer is based on the U.S. currency. Discount applies to time and mileage charges for "The Best Available Rate" and cannot be combined with any other discounts, offers, coupons, special promotions or commercial rates. This discount does not apply to commercial accounts or contracted rates. Rates may vary by location and time of year. Taxes, fees and surcharges are extra. Rental must meet Budget age, driver and credit requirements. An additional daily surcharge may apply for renters under 25 years of age. Optional products such as damage waiver, PDS, refueling and other product services may apply and are extra. Offer is not valid on certain vehicle types. Offer is not valid on certain vehicle types. Offer is not applicable on Budget Truck customers. See your local office for reservation for the list of applicable charges. Rates are subject to change without notice. Rates are available for U.S. residents only. Rental must begin by 12/31/15.

F-133C(2/15)

Rental Terms and Conditions

1. These terms and conditions, the rental document, signed by you, and a return record with computed rental charges together constitute the rental agreement ("agreement") between you and Budget Rent a Car System, Inc. or the independent Budget System Licensee identified on the rental document ("Budget"). Further references to the "rental document" alternatively mean the front of these terms, if there is no separate rental document.
2. You rent from us the car described on the rental document, which rental is solely a bailment for mutual benefit. You agree to the terms below and on the other panels of this Rental Document Jacket provided any such term is not prohibited by the law of a jurisdiction covering this rental, in which case such law controls. "You" and "your" refer to the person who signs this agreement, "we," "our" and "us" refer to Budget. You also agree that you are not our agent for any purpose; and that you cannot assign or transfer your obligations.
3. **Return of the Car.** You must return the car in the same condition you received it, ordinary wear and tear excepted, on the date and at the time indicated on the rental document. You must return it sooner on our demand. If you return it earlier or later, a different or higher rate may apply and, if returned later, you may be charged a late return fee. You may not return the car at a time when we are closed. If you do, your responsibility for damage to or loss of the car will continue and all charges stated on the rental document as a periodic rate will continue to accrue until the return location reopens and we retake actual possession of the car. If we do not find the car when that location reopens, your responsibility for all charges and for damage to or loss of the car will continue until the car is actually returned or recovered. If you wish to extend any rental you must contact us at 1-800-527-7000 to request it before your return date. We may or may not grant an extension or grant it for the entire period you request, in our sole discretion. If we do grant an extension a different or higher rate may be applied to the extension period and a service fee may also apply.
4. **Where You'll Return the Car.** The car must be returned to the agreed return location as specified on the rental document. If return is indicated to a location other than the location where your rental commences, you may have to pay a "one way service fee". If you return the car to a different location from the agreed return location without our permission, you agree to pay the "unauthorized return location fee" specified by us. If this fee is higher by multiplying normal mileage rate by distance between renting location and actual return location as specified on the rental document/return record, you'll pay the higher fee. You also understand that a different or higher rate may apply.
5. **Rental Charges.** You will pay for the number of miles you drive and the period of time you rent the car at the rate indicated on the rental document. The minimum charge is one day (24 hours), unless "calendar day" is indicated on the rental document, plus mileage, or a fixed fee. We will determine the miles by reading the factory-installed odometer. The daily charge applies to consecutive 24-hour periods starting at the hour and minute the rental begins or, if a calendar day is specified on the rental document, each consecutive calendar day or any part of a calendar day starting on the calendar day on which the rental commences. If you fail to comply with any conditions for special rates specified on the rental document our otherwise applicable rates will be charged. You'll pay all charges that apply to the rental for miscellaneous services and, where permitted, airport facility fees and/or concession recovery fees, vehicle license recovery fees, other fees and surcharges. If you present any rewards certificates, coupons or vouchers associated with a loyalty rewards program, you may be charged a redemption fee. You will also pay a reasonable fee for cleaning the car's interior upon return for excessive stains, dirt or soilage attributable to your use. We maintain a non smoking fleet. You will pay an additional charge if you smoke in the car. You and any third party to whom any rental charges are billed,

rental agreement. Other exclusions to SLI are listed in the SLI policy. You understand that you will be charged the rate per day for a full day even if you don't have the car for the entire day.

19. **Indemnification and Waiver.** You agree to indemnify us, our parent and affiliated companies for and hold us harmless from any loss, liability and expense that we incur arising out of the use of the car, including reasonable attorney's fees: (a) which exceeds the greater of either the minimum limits of financial responsibility pursuant to the motor vehicle insurance law of the applicable jurisdiction, or the limits of any liability protection that we furnish to you; or (b) which results from any unauthorized use or prohibited operation of the car. You waive any claim against us for incidental, special or consequential damages in connection with the rental. You waive any claim against us for incidental, special or consequential damages in connection with the rental. If the rental takes place at a location operated by a Budget System Licensee and a claim relating to this transaction is made against Budget Rent A Car System, Inc., that alleges unfair, deceptive or unconscionable conduct that renting Budget licensee agrees to indemnify and hold Budget Rent a Car System, Inc., harmless from and against such claim, including the related costs and expenses.

20. **Repossessing the Car.** We can repossess the car anytime it is found illegally parked, being used to violate the law or the terms of this agreement, or appears to be abandoned. We can also repossess anytime we discover that a misrepresentation was made to obtain the car. You agree that we needn't notify you in advance. If the car is repossessed, you agree to pay the actual and reasonable costs incurred by us to repossess the car. You agree that such cost will be charged to the card you used to rent the car.

21. **Collections.** If you do not pay all amounts due to us under this agreement upon demand, including all charges, fees and expenses, including, without limitation, payment for loss of or damage to the car, rental charges, parking and traffic fines and penalties, toll charges, towing, storage and impoundment fees, you agree to pay a late charge of 1 1/2% per month on the past due balance or the highest rate permitted by applicable law, whichever is less (collectively, "Charges"). If you use e-Toll, you will be charged a \$3.95 convenience fee for each day of the rental including any days on which e-Toll is not used, up to a maximum of \$16.75 per rental month, plus incurred tolls at the maximum prevailing rate posted by the toll authority, regardless of the method of payment used. You agree to also pay for any costs that we incur in seeking to collect such Charges including, without limitation, court costs and attorney's fees in addition to any administrative fees, cost recovery, insufficient funds fees and collection fees (collectively, "Costs"). If the law permits, you authorize us and our collection agent, to contact you or your employer, at your place of business about the payment of any past due Charges or Costs. You also agree that we or our collection agent(s) may access the personal information that you provided to us in any effort to collect any Charges or Costs under this section and may use the address provided by you on the Rental Document, or in any customer profile, as the place to send any demands or collection notices. **In the event that you presented a credit or debit card for payment, you understand that we may report such deficiency to an appropriate credit reporting agency and you also authorize us to share that credit and debit card information with third party collection agents and further authorize us or our collection agents to charge any amounts due to us including, but not limited to, the Charges and Costs**

referenced above, to that credit or debit card.

22. **Card Reserve.** You acknowledge that you have been informed that if you use charge card your credit, up to an amount of the estimated total charges due under this Agreement, as indicated on the rental document, based on your representation about this rental, may be set aside or reserved by the card issuer of the card, which you present for payment of your rental charges; or, if you use a debit card funds in the account to which that card is linked may be set aside the greater of the amount of the estimated total charges due under the Agreement, based on your representation about this rental, as indicated on the rental document or the deposit amount indicated on signs at the location at which you rent at the time of rental. You consent to the reservation or setting aside that estimated total amount at the time of commencement of the rental. You understand that we will authorize the release of any excess reserve or set aside upon the completion of your rental, and that your card issuer's rules apply to your credit line or your account being credited for such excess and may not be immediately released by your card issuer.
23. **Lost or Damaged Property.** We are not responsible for loss of or damage to any property in or on the car, in any service vehicle, on our premises, or received or handled by us, regardless of who is at fault. You'll be responsible to us for claim by others for such loss or damage.
24. **Meaning of "Car."** The word "car" in this agreement means the vehicle rented or its replacement, and includes tires, tools, equipment, accessories, plates, and car documents, unless otherwise explicitly specified in this rental agreement.
25. **Changes.** Any change in this agreement or our rights must be in writing and signed by our president or a vice president.
26. **Currency Conversion.** If you use a credit or charge card that is issued by a financial institution outside of the United States and your charges are billed to us in a currency other than U.S. Dollars, the full amount of your charges will be converted to the card account's billing currency by us unless you submit a written request in advance to have the currency conversion performed by your card issuer. Our conversion will be based on a conversion rate published by Reuters and will incorporate a processing charge no higher than 3% applied to all amounts relating to this transaction. This charge will replace the currency conversion processing charge applied by your card issuer. You understand that your card issuer has a currency conversion process; that you have chosen not to use your card issuer's currency conversion process; and that you will have no recourse against your card issuer with respect to any matter related to the currency conversion or disclosure thereof.
27. **Emergency Sickness Protection ("ESP").** Where available, is available only to Canadian renters and international renters with valid non U.S. passports. You'll pay for ESP, if you accept it. You'll be charged the rate per day for a full day even if you don't have the car for the entire day. ESP is offered by an independent insurer and is explained in a brochure available at the counter.
28. **OnStar and Satellite Radio.** You acknowledge that the car may be equipped with the OnStar System, which provides emergency and other services. You expressly authorize all of those services. You acknowledge that you understand that OnStar requires the car's electrical system and equipment, cellular service and satellite technologies to be available and operating for OnStar to function properly. Not all OnStar services are available on all cars. OnStar acts as a link to existing emergency and other service providers. Services are limited by, and neither OnStar nor Budget is liable for, conditions or services outside their control. Any information (e.g. navigational route support) provided through OnStar is on an "as is" basis. OnStar, its service providers and Budget will not be liable to you or any user of OnStar in connection with the use of such information. You understand and agree that OnStar may provide law enforcement with all

such as an insurer or employer, are jointly and severally responsible for payment of all such charges. If you direct us to bill any such charges to a third party, you represent that you are authorized to do so. If you use a car with automatic toll payment capability, you will pay us or our toll program administrator for all tolls incurred during your rental and all related fees, charges and penalties. Budget issues discount codes to individuals. By entering into this rental agreement you represent you have the express authorization of Budget to use such codes. Any other use will be viewed as an unlawful use and theft of services for which Budget can pursue legal remedies including but not limited to reasonable attorneys fees and costs.

6. **Taxes.** You'll pay all sales, use, rental, environmental and excise taxes, including tax-related surcharges.
7. **Loss Damage Waiver.** Loss Damage Waiver (LDW) is not insurance and not mandatory. If you accept full LDW by your initials on the rental document at the daily rate, for each full or partial day that the car is rented to you, and the car is operated in accordance with this agreement, we assume all loss or damage to the car except, if permitted by law, for lost, damaged or stolen keys or remote entry devices, towing or tire service unless related to an accident, or recovery of the car if stolen, and except for your amount of "responsibility", if any, specified on the rental document. Partial Loss Damage Waiver (PDW) is available only where permitted by law. If you accept PDW at the indicated daily rate, and the car is operated in accordance with this agreement, we assume all loss or damage to the car up to the amount as specified on the rental document and you accept responsibility for all other loss or damage. If you do not accept either LDW or PDW, you owe for all loss or damage to the car. Loss and damage are described in the following paragraph. You acknowledge you have been advised that your own insurance may cover loss or damage to the car. **You also acknowledge reading the notice on loss damage shown on the rental document, or at the end of these terms, or in separate notice form.**
8. **Damage/Loss to the Car.** If you do not accept LDW, or if the car is lost or damaged as a direct or indirect result of a violation of paragraph 15, you are responsible; and you will pay us for all loss of or damage to the car regardless of cause, or who, or what caused it. If the car is damaged, you will pay our estimated repair cost, or if, in our sole discretion, we determine to sell the car in its damaged condition, you will pay the difference between the car's retail fair market value before it was damaged and the sale proceeds. Where permitted by law, you authorize us to charge you for the actual cost of repair or replacement of lost or damaged items such as glass, mirrors, and antenna, as part of your rental charges at the time of return. If the car is stolen and not recovered you will pay us the car's fair market value before it was stolen. As part of our loss, you'll also pay for loss of use of the car, without regard to our fleet utilization, plus an administrative fee, plus towing and storage charges, if any ("Incidental Loss"). If your responsibility is covered by any insurance, you will provide us with the name of the insurer and policy number, or if the insurance is provided by your card issuer, its insurer. You authorize us to process any or all of our Incidental Loss to your card at or after the completion of your rental. You also authorize us to collect any or all of our loss from any third party that is responsible for it. If we collect our loss from a third party after we have collected our loss from you, we will refund the difference, if any, between what you paid and what we collected from the third party. If the law of a jurisdiction covering this rental requires conditions on LDW that are different than the terms of this agreement, such as if your liability for ordinary negligence is limited by such law, that law prevails. You understand that you are not authorized to repair or have the car repaired without our express prior written consent. If you repair or have the car repaired without our consent, you will pay the estimated cost to restore the car to the condition it was in prior to your rental. If we authorize you to have the car repaired, we will reimburse you for those repairs only if you give us the repair receipt.
9. **Loss Damage Waiver Fee.** If you accept LDW, you'll pay the daily LDW rate as specified on the rental document. If PDW is available, and you accept it instead of LDW, you'll pay the daily PDW rate as specified on the rental document. In either

case, you agree to pay the applicable daily rate for a full day if you don't have the car for the entire day. The fee is the applicable daily rate multiplied by the number of rental days.

10. **Fuel Service Charge.** Most rentals come with a full tank of fuel, but that is not always the case.

(a) Where available, if permitted by law, if you drive less than 75 miles, you acknowledge that **we will add a flat fee to the rental**, the amount of which will be disclosed on the rental document and at the counter prior to rental. You may **avoid this charge at time of return by providing a receipt for fuel purchased** at which time the flat fee will be reversed from your total rental charges.

If (a) does not apply, there are three refueling options:

(b) If you do not accept the fuel service option, where available, at the beginning of your rental, and you return the car with less fuel than was in it when you received it, we will charge you a fuel service charge at the applicable rate per-mile or per-gallon rate specified on the rental document. The per-mile rate is used if you do not buy fuel during the rental. To calculate this amount, we multiply the number of miles driven, as shown on the car's odometer, times the per-mile rate shown on the rental document. The per-gallon rate is used if you buy fuel during the rental and provide us with a receipt on our request; but the tank is not as full when you return the car as when you received the car (by using the factory-installed gauge, rounded down to the nearest 1/8 tank), times the per-gallon rate shown on the rental document. Although two methods are used for ease of calculation, the per-mile and per-gallon rates produce approximately the same result.

(c) If you accept the fuel service option at the beginning of your rental, you will be charged as shown on the rental document for that purchase and you will not pay us a fuel service charge. If you choose this option, you will not incur an additional fuel service charge, but you will not receive any credit for fuel left in the tank at the time of return. The per-gallon cost of the fuel service option will always be lower than the fuel service charge. The cost of refueling the car yourself at a local service station may be lower than the fuel service charge or the fuel service option. You acknowledge that the fuel service charge is not a retail sale of fuel.

(d) You may avoid a fuel service charge if you return the car with the fuel tank as full as when you received it and, if requested by us, present a receipt for your fuel purchase.

11. **Personal Accident & Effects Insurance (PAE).** You'll pay for Personal Accident/Effects Insurance if you accept it. You understand that you'll be charged the rate per day for a full day even if you don't have the car the entire day.
12. **Roadside SafetyNet.** Roadside SafetyNet (RSN) is not insurance and is not mandatory. Where available, you'll pay for RSN, if you accept it at the rate shown on the rental document for each full or partial rental day. RSN provides roadside assistance at no charge in addition to the daily fee for: lost keys and remote entry devices, lockouts, flat tire service, towing (if the car becomes inoperable), jump starts, emergency fuel delivery (up to 3 gallons, as we determine is needed). **Prohibited use of the car will void this option.**
13. **Fines, Expenses, Costs and Administrative Fees.** You'll pay all fines, penalties and court costs for parking, traffic, toll and other violations; including storage liens and charges. You'll also pay a reasonable administrative fee with respect to any violation of this agreement, such as for repossessing or recovering the car for any reason.
14. **Error in Rental Charges.** The charges shown on the return record are not final and are subject to our review. You'll pay any undercharges and you'll receive a

refund for any overcharges we discover on review.

15. **Prohibited Use of the Car & Voiding of Optional Services.** Certain use of the car and other things you or a driver may do, or fail to do, will violate agreement and, in addition to anything else may cause us to cancel your enrollment in Budget Fastbreak Service. **A VIOLATION OF THIS PARAGRAPH WHICH INCLUDES USE OF THE CAR BY AN UNAUTHORIZED DRIVER, WILL AUTOMATICALLY TERMINATE YOUR RENTAL, IS AN EXCLUSION TO A VOIDS ALL LIABILITY PROTECTION AND ANY OPTIONAL SERVICES THAT YOU HAVE ACCEPTED, INCLUDING SUPPLEMENTAL LIABILITY INSURANCE, PERSONAL ACCIDENT & EFFECTS INSURANCE, EMERGENCY SICKNESS PROTECTION, ROADSIDE SAFETYNET AND LOSS DAMAGE WAIVER. IT ALSO MAKES YOU LIABLE TO US FOR ALL THE PENALTIES, FINES, FORFEITURES, LIENS AND RECOVERY AND STORAGE COSTS, INCLUDING ALL RELATED LEGAL EXPENSES, FEES AND COSTS.**

It is a violation of this paragraph if:

A. You use or permit the car to be used: 1) by anyone other than authorized driver, as defined in paragraph 16; 2) to carry passengers or property for hire; 3) to tow or push anything; 4) to be operated in a test, race or contest or on unpaved roads; 5) while the driver is under the influence of alcohol or a controlled substance; 6) for conduct that could properly be charged as a felony or misdemeanor, including transportation of a controlled substance or contraband; 7) recklessly or while overloaded; 8) if rented in the United States, outside of the United States, or with our permission, Canada; or 9) if rented in Canada, outside of Canada, or with our permission, the United States or

B. You or an additional driver, authorized or not: 1) fail to promptly report any damage to or loss of the car when it occurs or when you learn of it and provide us with a written accident/incident report or fail to cooperate fully with our investigation; 2) obtained the car through fraud or misrepresentation; 3) leave the car and fail to remove the keys or close and lock all doors, close all windows and the trunk and the car is stolen or vandalized; 4) intentionally or with willful disregard cause or allow damage to the car, or 5) return the car after hours and the car is damaged, stolen or vandalized.

C. Driving or operating this car while using a hand-held wireless communication device or other device that is capable of receiving or transmitting telephonic communications, electronic data, mail or text messages shall be deemed a breach of this contract.

16. **Who May Drive the Car.** You represent that you are a capable and valid licensed driver. You agree that we have the right to verify that your license has been validly issued and is in good standing; and that we may refuse to rent to you if your license has been suspended, revoked or otherwise restricted in any way. We reserve the right to deny rentals based upon information provided by the Motor Vehicle Department of the jurisdiction that issued your license. Except where otherwise specifically authorized by applicable law, only you, your spouse or domestic partner, or, if you rent from us under your employer's corporate account agreement, your employer or a regular fellow employee incidental to business duties may drive the car, but only with your prior permission. The other driver must be at least 25 years old and must be a capable and validly licensed driver. There may be a charge for each additional driver authorized to drive the car, which charge is specified on the rental document, unless prohibited by law covering this rental.
17. **Liability Protection.** Anyone driving the car who is permitted to drive it by this agreement will be protected against liability for causing bodily injury or death to

others or damaging the property of someone other than the authorized driver and/or the renter up to the minimum financial responsibility limits required by the law of the jurisdiction in which the accident occurs. The limit for bodily injury sustained by any one person includes any claim for loss of that person's consortium or services. Where the law extends this protection to a non-permitted driver, the same limits will apply. **Except where required by law to be primary, any protection provided by us shall be secondary to, and not in excess of, any applicable insurance available to you, or any other driver, from any other source, whether primary, excess, secondary or contingent in any way.** If this protection is extended by operation of law to anyone not permitted by this agreement to drive the car, or to any person or instance where coverage is not intended to be afforded by this agreement, the financial responsibility limits of the jurisdiction in which the accident occurs will apply. You agree that we can provide coverage under a certificate of self-insurance or an insurance policy, or both, as we choose. In any case, a copy of the policy and/or certificate will be available for your inspection at our main office. You understand that unless required by applicable law, we will not provide (a) coverage for fines, penalties, punitive or exemplary damages; (b) coverage for bodily injury to you, or your death while not a driver, or any member of your family or the driver's family, or to a fellow employee arising out of or in the course of employment; (c) defense against any claim, unless we are required to provide primary protection, but in such event not after the applicable limits of protection that we furnish are tendered; (d) supplementary no fault, noncompulsory uninsured or underinsured motorist coverage, and any other optional or rejectable coverage, and you and we reject all such coverages to the extent permitted by law. Where any of these coverages are required or implied by law, the limits shall be the minimum required under applicable statute. Where permitted by law, you are rejecting uninsured or underinsured motorist and all optional automobile insurance coverages and under any policy of insurance or certificate of self-insurance in connection with this agreement, for you and all other passengers in the car. You understand that uninsured and underinsured motorist coverage protects you and other passengers in a car for losses and damages suffered if injury is caused by the negligence of a driver who does not have any insurance or has insufficient insurance to pay for losses and damages. There is no coverage in Mexico, and the car may not be taken into Mexico under any circumstances, unless special arrangements are made at the renting location for separate Mexican insurance, where such insurance is available.

- 18. Supplemental Liability Insurance (SLI) & Exclusions.** You'll pay for SLI, if available, and if you accept it. In that case, the coverage provided by us according to paragraph 17 above will be primary and the combined limits of liability protection will be 1,000,000 or \$2,000,000 depending on the place of rental for bodily injury, death, or property damage for each accident, but not for more than the contracted \$1,000,000 or \$2,000,000 limit for each accident, instead of the basic limits stated in paragraph 17 above. This additional coverage will be provided to an authorized driver, as defined in paragraph 16 above, under a separate policy of excess liability insurance more fully described in the available brochure and is subject to all of the conditions and limitations described in paragraph 17 above, except that notwithstanding anything contained in this agreement, the terms of the policy will at all times control. **SLI does not apply to liability for bodily injury or property damage arising out of any "prohibited use of the car" as described in paragraph 15 of this**

APPENDIX B

Exhibit 3 – Copy of Fax cover sheet and “UCC Financing Statement”

FedEx

Office

Fax Cover Sheet

Date Nov 5, 2015Number of pages 4 (including cover page)To: Attn: Shelly

From:

Name

Name

Company Budget Car Rental/SalesCompany The C. Williams Group LLCTelephone 509 943-5225Telephone 702-833-6442Fax 509 946-5316Comments UCC Financing statement/claim

7 90363 00711 1

Fax - Local Send



7 90363 00714 2

Fax - Domestic Send



7 90363 00720 3

Fax - International Send

fedex.com 1.800.GoFedEx 1.800.463.3339

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0017745PM

Loss
prevention
Phone 757-687-2677
Fax 757-687-2345

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS

40563143
7LJY345

A. NAME & PHONE OF CONTACT AT FILER (optional)
corey j pugh sr 509 438 5805

B. E-MAIL CONTACT AT FILER (optional)
thec.williamsgroup@gmail.com

C. SEND ACKNOWLEDGMENT TO: (Name and Address)
corey j pugh sr 509 438 5805
THE C WILLIAMS GROUP LLC
PO BOX 4643
PASCO WA USA 99301

Date of Filing : 10/04/2015
Time of Filing : 01:45:00 PM
File Number : 2015-277-6328-1
Lapse Date : 10/04/2020

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a. ORGANIZATION'S NAME
THE BANK OF NEW YORK MELLON TRUST COMPANY

OR 1b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

CITY
VIRGINIA BEACH

STATE
VA

POSTAL CODE
90045

COUNTRY
USA

1c. MAILING ADDRESS
300 CENTRE POINTE

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION'S NAME
PV HOLDING CORP

OR 2b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

CITY
LOS ANGELES

STATE
CA

POSTAL CODE
90045

COUNTRY
USA

3. SECURED PARTY'S NAME (NAME OF ASSIGNEE OF ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME
THE C WILLIAMS GROUP LLC

OR 3b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

CITY
PASCO

STATE
WA

POSTAL CODE
99301

COUNTRY
USA

4. COLLATERAL: This financing statement covers the following collateral:

FORD MUSTANG 2015 VEHICLE ID NUMBER 1FA6P8TH9F5401117
LICENSE NUMBER 7LJY345 CHATTEL PROPERTY IS VAULED AT 23,000 MARKET VALUE,
SECURED PARTY IS CLAIMING FULL TITLE OF PROPERTY AND WILL TRANSFER TITLE
IMMEDIATELY
LIEN IS ATTACHED FOR 1,000,000,000.00 DOLLARS AND CONTINUANCE OF FEE'S AND
DAMAGES ARE APPLICABLE

COLLATERAL OF REALESTAE MARKET VALUE AT \$290,000.00, AND SECURED PARTY
CLAIMS FULL TITLE TO PROPERTY AND APPLIES IMMEDIATE FINANCING LENDING IN
CASH,

6. Check only if applicable and check only one box: Collateral is ☐ held in a Trust (see UCC1Ad, item 17 and Instructions) ☐ being administered by a Decedent's Personal Representative

8a. Check only if applicable and check only one box:
☐ Public-Finance Transaction ☐ Manufactured-Home Transaction ☐ A Debtor is a Transmitting Utility

7. ALTERNATIVE DESIGNATION (if applicable): ☐ Lessee/Lessor ☐ Consignee/Consignor ☒ Seller/Buyer ☐ Bailee/Bailor ☐ Licensee/Licensor

8. OPTIONAL FILER REFERENCE DATA:

UCC FINANCING STATEMENT ADDENDUM**FOLLOW INSTRUCTIONS**

9. NAME OF FIRST DEBTOR: Same as line 1a or 1b on Financing Statement; if line 1b was left blank because Individual Debtor name did not fit, check here ☐

9a. ORGANIZATION'S NAME

THE BANK OF NEW YORK MELLON TRUST COMPANY

OR

9b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

Date of Filing : 10/04/2015

Time of Filing : 01:45:00 PM

File Number : 2015-277-6328-1

Lapse Date : 10/04/2020

10. DEBTOR'S NAME: Provide (9a or 10b) only one additional Debtor name or Debtor name that did not fit in line 1b or 2b of the Financing Statement (Form UCC1) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name) and enter the mailing address in line 10c

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

10a. ORGANIZATION'S NAME

OR

10b. INDIVIDUAL'S SURNAME

INDIVIDUAL'S FIRST PERSONAL NAME

INDIVIDUAL'S ADDITIONAL NAME(S)/INITIAL(S)

10c. MAILING ADDRESS

CITY

STATE

POSTAL CODE

SUFFIX

COUNTRY

11. ☒ ADDITIONAL SECURED PARTY'S NAME or ☐ ASSIGNOR SECURED PARTY'S NAME: Provide only one name (11a or 11b)

11a. ORGANIZATION'S NAME

OR

11b. INDIVIDUAL'S SURNAME

corey j williams

FIRST PERSONAL NAME

coreyj pugh

ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

Sr

11c. MAILING ADDRESS

PO BOX 4643

CITY

PASCO

STATE

WA

POSTAL CODE

99301

COUNTRY

USA

12. ADDITIONAL SPACE FOR ITEM (Collateral):

13. ☐ This FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS (if applicable)

14. This FINANCING STATEMENT:

☐ covers timber to be cut ☐ covers se-extracted collateral ☐ is filed as a fixture filing

15. Name and address of a RECORD OWNER of real estate described in item 16 (If Debtor does not have a record interest):

16. Description of real estate:

17. MISCELLANEOUS:

Continuation of section 4 collateral

4. This FINANCING STATEMENT covers the following collateral:

CREDIT, OR CHECK, OF SAID COLLATERAL SEE EXHIBIT (A)

APPENDIX C

December 28, 2015 Transcript, pages 4-9

1 the other matter res burg and that cause number ending in
2 1178-6, that matter the affidavit in support of probable
3 cause was filed in October 20th of this year. Judge
4 Swisher made a probable cause finding and issued the
5 warrant the same day.

6 So to the extent you are making a motion based
7 on the validity of the warrant, that motion is denied.

8 MR. WILLIAMS: Thank you, sir. Does the
9 STATE have any type of probable cause I may see since I
10 represent myself and I haven't seen it?

11 THE COURT: Well, what we will do now is go
12 through the colloquy regarding self-representation. First
13 with respect to the cause number ending in 1280-4 that
14 charge being theft of a motor vehicle, and, counsel, this
15 is a class C felony; is it not.

16 MS. PETRA: No, I believe it's --

17 MR. WILLIAMS: It's a class C, sir.

18 MS. PETRA: I believe it's a B felony.

19 THE COURT: You believe it's a B felony?

20 MS. PETRA: But I do believe it's a B
21 felony.

22 THE COURT: Assuming that it is the greater
23 B felony, sir, you understand it would be punishable by up
24 to 10 years in the Department of Corrections and a fine
25 not to exceed \$20,000?

1 MR. WILLIAMS: Yes.
2 THE COURT: Sir, you understand if you
3 represent yourself you will be held to the same standards
4 as an attorney?
5 MR. WILLIAMS: Absolutely.
6 THE COURT: You understand you will be held
7 to the same standard as to your knowledge of the law and
8 court rules and the presentation of evidence?
9 MR. WILLIAMS: Yes, sir.
10 THE COURT: All right. Sir, what is the
11 highest grade you completed in school?
12 MR. WILLIAMS: I have three years of
13 college.
14 THE COURT: Are you familiar with the rules
15 of evidence in the State of Washington.
16 MR. WILLIAMS: Yes, I am.
17 THE COURT: Can you tell me how you are
18 familiar with them?
19 MR. WILLIAMS: I studied criminal law and
20 business law at Columbia Basin College.
21 THE COURT: Are you familiar with the
22 Revised Code of Washington? In particular the Revised
23 Code of Washington as it relates to the this charge?
24 MR. WILLIAMS: Yes, I am.
25 THE COURT: Can you tell me how you are

1 familiar with that?

2 MR. WILLIAMS: I believe that I've had
3 prior 7.8 motions with this prior RCW with another Alaska
4 statute which I fought in the Supreme Court.

5 THE COURT: Supreme Court of which state,
6 sir?

7 MR. WILLIAMS: Washington.

8 THE COURT: And when you say 7.8, you are
9 referring to the Washington Criminal Rule 7.8?

10 MR. WILLIAMS: Yes, sir.

11 THE COURT: And Ms. Petra are you aware of
12 the defendant's range calculation is for this charge.

13 MS. PETRA: For the theft of a motor
14 vehicle doesn't look like Mr. Bloor put that together on
15 that but I can tell you that the defendant has eight prior
16 felonies.

17 MR. WILLIAMS: I would object to that. She
18 has nothing in writing.

19 THE COURT: If you are familiar with that
20 then you understand that in these circumstances dealing
21 with preliminary determinations Evidence Rule 1101 applies
22 and I'm relying on the statement of counsel. Your
23 objection is noted and denied.

24 MS. PETRA: Looks like he has an offender
25 score of 10 with a standard range of 63 to 84 on the theft

1 of a motor vehicle. I don't show a letter in that matter
2 showing a standard range.

3 THE COURT: All right. Do you have the SRA
4 sheet for the theft of a motor vehicle?

5 MS. PETRA: I do not have the SRA sheet.
6 Just --

7 THE COURT: Given that information, you
8 also understand that residential burglary is a class B
9 felony as well?

10 MR. WILLIAMS: I do.

11 THE COURT: So again subject to the same
12 potential maximum of 10 years or a fine not to exceed
13 \$20,000. You are aware of that?

14 MR. WILLIAMS: Yes, sir.

15 THE COURT: Without agreeing that your
16 criminal history is calculation is correct you heard Ms.
17 Petra's recitation of what the guideline range is believed
18 to be in the State of Washington?

19 MR. WILLIAMS: Let the record reflect that
20 I object.

21 THE COURT: With that in mind, is it your
22 desire to represent yourself?

23 MR. WILLIAMS: Absolutely. As a secured
24 party, I am.

25 THE COURT: And, Ms. Petra, anything

1 further regarding the record for self-representation?

2 MS. PETRA: No, Your Honor.

3 THE COURT: At this time I'm satisfied you
4 are aware of the nature of the charge -- and just to
5 perfect the record again here, sir. You indicated you
6 were aware of the statute with respect to theft of a motor
7 vehicle. Are you also familiar with the Revised Code of
8 Washington and the elements as they relate to residential
9 burglary?

10 MR. WILLIAMS: As a secured party, sir, I
11 am aware and I do object to that.

12 THE COURT: Sir, I will have to ask you
13 what you mean by the term secured party?

14 MR. WILLIAMS: I'm secured party in the
15 State of Washington. My organization is secured party C.
16 Williams LLC. I've been brought before this Court in
17 that the Court is aware of my secured party status.
18 Nothing further.

19 THE COURT: All right. With that said, at
20 this time I'm going to find that you are aware of the
21 nature of the charge. You are aware you will be held to
22 the same standard as would an attorney before the Court.
23 And I will allow you to represent yourself, sir. You
24 understand at any time should you wish to be represented
25 by an attorney you may make such request to the Court and

1 you will be entitled to representation even if the Court
2 determines that you do not have the funds to retain an
3 attorney the court would have the authority to appoint an
4 attorney for you at no cost to you upon your request. You
5 understand that?

6 MR. WILLIAMS: Yes. May I request full
7 discovery of the State at this time also the probable
8 cause in --

9 THE COURT: You've made your request for
10 discovery. It will be provided in the normal course.
11 Discovery is not always provided at the initial appearance
12 or arraignment. The State also has the ability in
13 particular cases to secret action of material that they
14 believe is appropriate. What I would do is set this
15 matter on the next docket. Is this a Thursday or
16 Wednesday case.

17 MS. PETRA: Thursday.

18 THE COURT: I'll set this on for next
19 Thursday so that discovery can be provided but with that
20 in mind do you wish to proceed to arraignment at this
21 time.

22 MR. WILLIAMS: We can go ahead and weight
23 to the next Thursday. I would like to, if we can,
24 address bail and my status as far as my employment and how
25 the State feels about that.

APPENDIX D

State v. Ma, 195 Wn. App. 1036 (2016) (unpublished)

195 Wash.App. 1036

Only the Westlaw citation is currently available.

NOTE: UNPUBLISHED OPINION,
SEE WA R GEN GR 14.1

Court of Appeals of Washington,
Division 2.

State of Washington, Respondent,

v.

Michael Saechang Ma, Appellant.

No. 47226-1-II

|

Filed August 9, 2016

Appeal from Pierce County Superior Court, No.
14-1-01726-1, Honorable John Russell Hickman, Judge

Attorneys and Law Firms

Travis Stearns, Washington Appellate Project, Seattle,
WA, Counsel for Appellant(s).

Chelsey L. Miller, Attorney at Law, Tacoma, WA,
Counsel for Respondent(s).

UNPUBLISHED OPINION

MAXA, J.

*1 Michael Ma appeals the sentence for his residential burglary conviction, challenging the imposition of certain legal financial obligations (LFOs) mandated by statute: a crime victim penalty assessment (RCW 7.68.035(1)(a)), a DNA fee (RCW 43.43.7541), and a criminal filing fee (RCW 36.18.020(2)(h))¹. The Supreme Court in *State v. Blazina* emphasized that the trial court must make an individualized inquiry into a defendant's current and future ability to pay before imposing *discretionary* LFOs under RCW 10.01.160. 182 Wn.2d 827, 838, 344 P.3d 680 (2015). Ma argues that the trial court must make the same inquiry before imposing *mandatory* LFO's under other statutes. He also argues that imposing mandatory LFOs on a defendant who is unable to pay them violates equal protection and substantive due process guarantees.

We hold that (1) under the plain language of the applicable statutes, a sentencing court is required to impose mandatory LFOs and therefore has no obligation to assess the defendant's ability to pay them; and (2) imposing mandatory LFOs on indigent criminal defendants does not violate equal protection or substantive due process. Accordingly, we affirm Ma's sentence and the imposition of mandatory LFOs consisting of the crime victim penalty assessment, DNA fee, and criminal filing fee.

FACTS

The State charged 32-year-old Ma with one count of residential burglary. A jury found him guilty of this charge.

The trial court sentenced Ma to four months of incarceration. The trial court also imposed \$800 in mandatory LFOs: a crime victim penalty assessment of \$500, a DNA fee of \$100, and a criminal filing fee of \$200. Ma appeals his sentence.

ANALYSIS

A. IMPOSITION OF MANDATORY LFOs

Ma argues that trial court has an obligation to assess a defendant's current and future ability to pay before imposing mandatory LFOs. We disagree.

1. Statutory Language

Specific statutes required the trial court to impose the challenged LFOs as part of Ma's sentence. RCW 7.68.035(1)(a) provides that a \$500 crime victim penalty assessment "*shall be imposed*" for every felony conviction and the amount of the penalty "*shall be*" \$500. (Emphasis added.) Former RCW 43.43.7541 (2011) provides that every felony sentence "*must include*" a \$100 fee, 80 percent of which must be deposited in the DNA database account. (Emphasis added.) RCW 36.18.020(2)(h) provides that upon conviction in superior court, the defendant "*shall be liable*" for a \$200 fee for services of the court clerk. (Emphasis added.) None of these statutes requires that the trial court consider the defendant's ability to pay these fees.

RCW 7.68.035(1)(a) and RCW 36.18.020(2)(h) expressly use the word “shall” when discussing fees. The word “shall” presumptively creates an imperative duty rather than conferring discretion. *Blazina*, 182 Wn.2d at 838. The word “must” as used in former RCW 43.43.7541 has the same meaning.² *State v. Thornton*, 188 Wn. App. 371, 375, 353 P.3d 642 (2015).

*2 In *State v. Curry*, the Supreme Court addressed the crime victim penalty assessment in RCW 7.68.035(1)(a). 118 Wn.2d 911, 917-18, 829 P.2d 166 (1992). The court held that the penalty was mandatory and noted that, unlike RCW 10.01.160³, RCW 7.68.035(1)(a) did not provide that the penalty could be waived for indigent defendants. *Id.*

In *State v. Lundy*, this court discussed the same three mandatory LFOs imposed here. 176 Wn. App. 96, 102, 308 P.3d 755 (2013). The court stated that “the legislature has divested courts of the discretion to consider a defendant’s ability to pay when imposing these obligations. For victim restitution, victim assessments, DNA fees, and criminal filing fees, the legislature has directed expressly that *a defendant’s ability to pay should not be taken into account.*” *Id.* (emphasis added). This court described the sentencing court’s finding of the defendant’s present or future ability to pay as “surplusage.” *Id.* at 103.

This court recently confirmed the mandatory nature of the victim penalty assessment and DNA fee in *State v. Mathers*, 193 Wn. App. 913, 918, —P.3d — (2016), petition for review filed, No. 93262-0 (Wash. June 16, 2016). Other courts have agreed that imposition of the LFOs at issue here is mandatory for all sentences regardless of the defendant’s ability to pay. *State v. Clark*, 191 Wn. App. 369, 373, 362 P.3d 309(2015) (victim penalty assessment, DNA fee and criminal filing fee); *Thornton*, 188 Wn. App. at 374-75 (DNA fee); *State v. Kuster*, 175 Wn. App. 420, 424, 306 P.3d 1022 (2013) (victim penalty assessment and DNA fee); *State v. Thompson*, 153 Wn. App. 325, 336, 338, 223 P.3d 1165 (2009) (DNA fee).

Ma points out that RCW 9.94A.753 states that restitution “shall” be ordered, but also states that “the court may not reduce the total amount of restitution ordered because the offender may lack the ability to pay the total amount.” He argues that because the legislature did not use similar language in the mandatory LFO statutes, it must have

intended to allow trial courts to waive mandatory LFOs if the offender lacks the ability to pay.

Ma cites *State v. Conover*, in which the Supreme Court stated that “the legislature’s choice of different language indicates a different legislative intent.” 183 Wn.2d 706, 713, 355 P.3d 1093 (2015). But in *Conover* the legislature used different language in subsections of the same statute. Ma cites no authority for the proposition that we should compare the language of statutes in different RCW chapters that involve different legislative intent. Therefore, we reject this argument. *See Mathers*, 193 Wn. App. at 918-21.

We hold that under the plain language of the applicable statutes, a trial court must impose mandatory LFOs and therefore is not required to assess the defendant’s ability to pay them.

2. Inapplicability of RCW 10.01.160(3) and *Blazina*

Ma argues that RCW 10.01.160(3) requires that a trial court consider a defendant’s ability to pay before imposing mandatory LFOs and that the Supreme Court’s application of that statute in *Blazina* controls over *Curry* and *Lundy*. We disagree.

*3 RCW 10.01.160(1) states that a trial court may require a defendant to pay “costs.” RCW 10.01.160(3) states that a trial court “shall not order a defendant to pay costs unless the defendant is or will be able to pay them.” In *Blazina*, the Supreme Court held that RCW 10.01.160(3) requires the trial court to make an individualized inquiry into a defendant’s current and future ability to pay before imposing LFOs. 182 Wn.2d at 838.

But RCW 10.01.160(3) clearly applies only to “costs” awarded under RCW 10.01.160(1). RCW 10.01.160(2) states that “[c]osts shall be limited to expenses specially incurred by the state in prosecuting the defendant or in administering the deferred prosecution program ... or pretrial supervision.” The victim penalty assessment, DNA fee, and criminal filing fee do not fall within this definition. As a result, these fees are not subject to RCW 10.01.160(3). *See Clark*, 191 Wn. App. at 374.

Ma claims that *Blazina* applies broadly to all LFOs, discretionary and mandatory. But the court’s holding was expressly limited to whether RCW 10.01.160(3) requires the trial court to consider a defendant’s ability to pay.

Blazina, 182 Wn.2d at 839. Because RCW 10.01.160(3) applies only to costs awarded under RCW 10.01.160(1), we do not interpret *Blazina* as addressing mandatory LFOs. Further, although the court in *Blazina* does refer generally to “LFOs” throughout the opinion, the opinion makes clear that it was discussing only discretionary LFOs. *Id.* at 837 (framing the defendants’ argument that the sentencing court had certain obligations “in order to impose discretionary LFOs under RCW 10.01.160(3)”).

We hold that RCW 10.01.160(3) and *Blazina* are inapplicable to the imposition of mandatory LFOs.

3. Inapplicability of GR 34(a)

Ma argues that General Rule (GR) 34(a) supports a holding that a trial court can waive mandatory LFOs. We disagree.

GR 34(a) provides that a person may seek, on the basis of indigent status, the waiver of mandatory filing fees or surcharges required to obtain access to judicial relief. This rule was adopted to “ensure that indigent litigants have equal access to justice.” *Jafar v. Webb*, 177 Wn.2d 520, 523, 303 P.2d 1042 (2013).

However, GR 34(a) clearly applies only to civil litigants who must pay filing fees to seek relief in the courts. It has no application to criminal defendants, who are not required to pay filing fees, have access to the courts, and already have been convicted. And the payment of LFOs imposed as part of a criminal sentence is completely different than a civil filing fee. *See Mathers*, 193 Wn. App. at 923-24.

We hold that GR 34(a) is inapplicable to the imposition of mandatory LFOs.

C. EQUAL PROTECTION CHALLENGE

Ma argues that requiring trial courts to impose mandatory LFOs without the possibility of waiver violates equal protection because trial courts can waive mandatory filing fees for indigent *civil* litigants under GR 34 but cannot waive mandatory LFOs for criminal defendants.⁴ We disagree.

1. Legal Principles

The Fourteenth Amendment to the United States Constitution and article I, section 12 of the Washington Constitution guarantee equal protection under the law. “Equal protection requires that similarly situated individuals receive similar treatment under the law.” *Harris v. Charles*, 171 Wn.2d 455, 462, 256 P.3d 328 (2011). We review constitutional challenges de novo. *State v. Schmeling*, 191 Wn. App. 795, 798, 365 P.3d 202 (2015).

***4** The appropriate level of review in equal protection claims depends on the nature of the classification or the rights involved. *State v. Hirschfelder*, 170 Wn.2d 536, 550, 242 P.3d 876 (2010). We apply a strict scrutiny standard when state action involves suspect classifications like race, alienage and national origin and/or fundamental rights. *Id.* We apply intermediate scrutiny for semi-suspect classifications and/or important rights. *Id.* Otherwise, we apply rational basis review. *Id.*

Ma is not a member of a suspect or semi-suspect class, and he does not argue that the imposition of mandatory LFOs implicates a fundamental or important right. Therefore, we assume without deciding that rational basis review applies here.

Rational basis review is a highly deferential standard, and we will uphold a statute under this standard unless “‘it rests on grounds wholly irrelevant to the achievement of legitimate state objectives.’” *In re Det. of Stout*, 159 Wn.2d 357, 375, 150 P.3d 86 (2007) (quoting *State v. Thorne*, 129 Wn.2d 736, 771, 921 P.2d 514 (1996)). Rational basis requires only that the means employed by the statute be rationally related to a legitimate State goal, and not that the means be the best way of achieving that goal. *State v. Manussier*, 129 Wn.2d 652, 673, 921 P.2d 473 (1996).

2. Different Treatment for Indigent Criminal and Civil Litigants

Ma’s equal protection argument is cursory. He bases his claim on *Jafar*, in which the Supreme Court held that under GR 34, trial courts must waive all filing fees for indigent civil litigants even though the filing fee statutes are mandatory. 177 Wn.2d at 526-31. He also cites *James v. Strange*, in which the United States Supreme Court held that removing protections from criminal defendants that applied to civil judgment debtors violated equal protection. 407 U.S. 128, 135, 92 S. Ct. 2027, 32 L.Ed. 2d 600 (1972).

Here, there is a rational basis for treating civil litigants differently than indigent criminal defendants. As noted above, GR 34 allows the waiver of mandatory filing fees for indigent civil litigants to provide equal access to justice. *Jafar*, 177 Wn.2d at 526. Without such a waiver, indigent parties would not be able to seek relief in the courts. *Id.* at 529-31. Criminal defendants facing sentencing are not required to pay filing fees, have access to the courts, and already have been convicted.

Ma's reliance on *James* also is misplaced. There, the Court held unconstitutional a Kansas statute that allowed the State to obtain a civil judgment against a defendant to recover the cost of counsel in a criminal trial. 407 U.S. at 135, 141-42. The statute expressly treated criminal defendants subject to civil judgments for counsel costs differently than other civil judgment debtors, stripping from criminal defendants all of the exemptions provided to civil judgment debtors to prevent enforcement of such a judgment. *Id.* at 135. There are no similar circumstances here.

We hold that requiring trial courts to impose mandatory LFOs against indigent criminal defendants even though filing fees can be waived for indigent civil litigants does not violate equal protection.

C. SUBSTANTIVE DUE PROCESS CHALLENGE

Ma briefly argues that imposition of mandatory LFOs on indigent defendants violates substantive due process. We disagree.

1. Legal Principles

The Fifth and Fourteenth Amendments to the United States Constitution and article I, section 3 of the Washington Constitution provide that no person may be deprived of life, liberty, or property without due process of law. "Substantive due process protects against arbitrary and capricious government action." *Amunrud v. Bd. of Appeals*, 158 Wn.2d 208, 218-19, 143 P.3d 571 (2006). An action violates substantive due process if a deprivation of life, liberty or property is substantively unreasonable or is not supported by legitimate justification. *Nielsen v. Dep't of Licensing*, 177 Wn. App. 45, 53, 309 P.3d 1221 (2013). Again, we review constitutional challenges de novo. *Schmeling*, 191 Wn. App. at 798.

*5 As with equal protection, the level of review we apply to a due process challenge depends on the nature of the right involved. *Amunrud*, 158 Wn.2d at 219. We apply a strict scrutiny standard when state action interferes with a fundamental right. *Id.* at 220. But we apply a rational basis standard when a fundamental right is not affected. *Id.* at 222.

Once again, Ma does not argue that the imposition of mandatory LFOs implicates a fundamental right and seems to suggest that we should apply rational basis review. Therefore, we assume without deciding that rational basis review applies here.

Under rational basis review, we determine whether a rational relationship exists between the challenged law and a legitimate state interest. *Id.* In making this determination, we "may assume the existence of any necessary state of facts which it can reasonably conceive." *Id.* The rational basis standard is highly deferential to the challenged action. *Nielsen*, 177 Wn. App. at 56. "The rational basis test is the most relaxed form of judicial scrutiny." *Amunrud*, 158 Wn.2d at 223.

2. Imprisonment for Nonpayment of LFOs

Ma argues that imposition of mandatory LFOs on indigent defendants violates due process because indigent defendants may be imprisoned for failure to pay LFOs. We disagree.

In *Curry*, the Supreme Court addressed the constitutionality of the mandatory victim penalty assessment under RCW 7.68.035(1). 118 Wn.2d at 917. The defendants argued that "the statute could operate to imprison them unconstitutionally in the future if they are unable to pay the penalty." *Id.* The court determined that the victim penalty assessment contained safeguards to prevent imprisonment and that no defendant would be incarcerated for the inability to pay the assessment unless nonpayment was willful. *Id.* at 918. Therefore, the court held that "the victim penalty assessment is neither unconstitutional on its face nor as applied to indigent defendants." *Id.*; see also *State v. Blank*, 131 Wn.2d 230, 240-42, 930 P.2d 1213 (1997).

This court in *Lundy* cited to *Curry* in discussing imposition of mandatory LFOs. 176 Wn. App. at 102-03. This court stated, "[O]ur courts have held that these mandatory obligations are constitutional so long as " 'there are

sufficient safeguards in the current sentencing scheme to prevent imprisonment of indigent defendants.’ ” *Id.* (quoting *Curry*, 118 Wn.2d at 918). Relying on *Curry* and *Lundy*, this court recently rejected a defendant's claim that the DNA fee violated his due process rights based on the risk of imprisonment. *Mathers*, 193 Wn. App. at 927–29. ⁵

We reject the argument that imposition of mandatory LFOs on indigent defendants violates substantive due process because those defendants may be imprisoned for failure to pay LFOs.

3. Rational Basis Analysis

Ma concedes that the State has a legitimate interest in collecting mandatory LFOs. But he argues that imposing mandatory LFOs on indigent defendants violates substantive due process because imposing fees on offenders who are unable to pay them does not rationally serve any state interest. ⁶ We disagree.

*6 Imposing mandatory LFOs is rationally related to the legislature's interest in collecting those fees on two levels. First, imposing mandatory LFOs on all convicted offenders without assessing their ability to pay is rationally related to collection because although some offenders may be unable to pay mandatory LFOs, some offenders will be able to pay. So imposing mandatory LFOs on all offenders will allow the State to collect some of those fees.

Second, imposing mandatory LFOs on offenders like Ma who are indigent at the time of sentencing is rationally related to collection because that indigency may not always exist. We can conceive of a situation in which an offender who is indigent at sentencing is able to pay the mandatory LFOs at some future time. So it is not unreasonable to believe that imposing mandatory LFOs on indigent offenders would allow the State to collect some of those fees.

We reject the argument that imposition of mandatory LFOs on indigent defendants violates substantive due process because some of those defendants may be unable to pay them.

We affirm Ma's sentence and the imposition as mandatory LFOs of the crime victim penalty assessment, DNA fee, and criminal filing fee.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

I concur:

WORSWICK, J.

BJORGEN, C.J. (concurring)

I agree with the result reached by the majority, but disagree with its analysis of the substantive due process challenge to mandatory legal financial obligations (LFOs).

As the majority points out, the rational basis standard is highly deferential. Its basic demand is a rational relationship between the challenged law and a legitimate state interest. *Amunrud v. Bd. of Appeals*, 158 Wn.2d 208, 222, 143 P.3d 571 (2006). In making this determination, we may assume the existence of any necessary state of facts which can reasonably be conceived. *Id.*

The central purpose of mandatory LFOs is to raise money to help fund certain elements of the criminal justice system. Requiring monetary payments from those who cannot and will not be able to pay them does nothing to serve that purpose. Without a *Blazina*-like ⁷ individualized determination of ability to pay, these mandatory assessments will generate obligations having no reasonable relation to their purpose.

The majority analysis would salvage a reasonable relationship through a dragnet rationale: because these assessments would be imposed on some who can pay, their imposition on those who cannot serves the purpose of raising money. In a temporal variant of the same approach, the majority analysis also argues that imposing these obligations on those who cannot pay serves the same purpose, because they may not be indigent at some point in the future.

CONCLUSION

The rational basis test does allow us to posit any reasonably conceivable state of facts in finding the needed rational relationship. Thus, we posit that some, perhaps even many, who are assessed mandatory LFOs can and will pay, which plainly serves the purpose of raising money. However, a license to engage in a *gedankenexperiment* to discover ways in which a measure could serve a purpose is not necessarily a license to impose that measure in ways that do nothing to serve the purpose. Without the individualized determination required by *Blazina*, mandatory LFOs will be imposed in many instances that have no relationship to their purpose. In those instances viewed by themselves, the assessment fails the rational basis test.

*7 The rational basis test, though, does not demand the same tailored relationship between means and purpose typically found in strict scrutiny. It may be that the degree of over-inclusiveness found in the majority's dragnet rationales is tolerated in the rational basis test. On the other hand, imposing these obligations on those who cannot pay can keep these individuals in violation of

their sentence terms long after any punishment has been satisfied, *see Blazina*, 182 Wn.2d at 835, thus increasing the system costs LFOs are intended to relieve. The self-contradiction in such a system lies close to the arbitrariness that not even the rational basis test can tolerate.

These issues are not discussed in the briefing. Without the treatment by the parties these questions of substantive due process require, we should not hold that our mandatory LFOs meet the requirements of substantive due process. Instead, I would affirm, holding that the briefing is inadequate for us to consider the challenge to mandatory LFOs based on substantive due process. *See Health Ins. Pool v. Health Care Auth.*, 129 Wn.2d 504, 511, 919 P.2d 62 (1996).

All Citations

Not Reported in P.3d, 195 Wash.App. 1036, 2016 WL 4248585

Footnotes

- 1 RCW 7.68.035 and 36.18.020 were amended in 2015. LAWS OF 2015, ch. 265, §§ 8 and 28, respectively. These amendments do not affect the issues in this case. Accordingly, we refrain from including the word "former" before these statutes.
- 2 Regarding the DNA fee, former RCW 43.43.7541 (2002) required trial courts to impose a DNA fee "unless the court finds that imposing the fee would result in undue hardship on the offender." In 2008 the legislature removed the hardship language to make the DNA fee mandatory regardless of hardship. *State v. Thompson*, 153 Wn. App. 325, 336, 223 P.3d 1165 (2009).
- 3 RCW 10.01.160 was amended in 2015. LAWS OF 2015, 3d Spec. Sess., ch. 35, § 1. This amendment does not affect the issues in this case. Accordingly, we refrain from including the word "former" before this statute.
- 4 Ma also argues that the imposition of mandatory LFOs violates equal protection (and implicates the right to travel) because some counties waive fees for indigent defendants and some do not. We decline to address this argument because nothing in the record establishes the inconsistent imposition of mandatory LFOs in different counties.
- 5 Ma argues that indigent defendants are regularly imprisoned for failing to pay fines. But he presents no convincing authority that supports this claim. *See State v. Nason*, 168 Wn.2d 936, 945, 233 P.3d 848 (2010) (state may imprison an offender capable of paying his cost if the defendant willfully refuses to pay without violating constitutional protections).
- 6 *Curry* and *Lundy* do not directly apply to this argument. In neither case is there any indication that the defendant made the argument Ma asserts—that imposing a mandatory fee on offenders who are unable to pay the fee does not rationally serve the legislature's interest in funding a DNA database. And in neither case did the court conduct a rational basis analysis. The same is true for *Mathers*.
- 7 *State v. Blazina*, 182 Wn.2d 827, 344 P.3d 680 (2015).

BENTON COUNTY PROSECUTOR'S OFFICE

September 27, 2017 - 4:21 PM

Transmittal Information

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